

APPLICANT:
Andrea M. Birkholz

REQUEST: A special exception
to allow a kennel in the Agricultural
District

HEARING DATE: May 9, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5592

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Andrea M. Birkholz

LOCATION: 3200 Winters Run Road, Joppa
Tax Map: 61 / Grid: 4D / Parcel: 146
First (1st) Election District

ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53H(3) of the Harford County Code to allow a kennel in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant, Andrea Birkholz, described her property as a 65.97 agriculturally zoned parcel just to the north of Interstate 95, on Winters Run Road in the Joppa area of Harford County. The main dwelling, in which the Applicant resides, was built in the late 1800's. The property is also improved by various out buildings used for agricultural purposes.

Ms. Birkholz described the property as being wooded and in pasture. The Staff Report, which provides a more complete description of the property, states:

"The subject property is unusually shaped with frontage on the west side of Winters Run Road. The property contains active farmland and is dense wooded areas (sic). The improvements consist of an older farm house, out buildings, two large dog houses, a fenced area for the dogs and fenced farm fields. The Applicant has almost completed fencing an area in front of the house to keep the dogs. She has also completed building a large structure to house the animals as reflected by the aerial photographs. The topography of the site is typical for the area ranging from rolling to steep."

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Ms. Birkholz explained her request to keep 16 dogs on her property. These dogs are, for the most part, mixed breed, and are mid-sized to small animals. The dogs are her personal animals. She does not breed dogs; she does not board dogs for hire; she provides no services for any other dog owner; she makes no money off the animals. They are for her personal enjoyment.

Ms. Birkholz explained she has a fenced area of 91 feet by 285 feet which was used by her father when he occupied the subject property as a fenced enclosure for sheep. Ms. Birkholz plans to use this enclosure as a compound for her dogs. She has moved to the compound a 12 feet by 6 foot dog house, and will be moving another 4 foot by 8 foot dog house to provide shelter for the animals.

Ms. Birkholz does not believe the animals can be heard from any adjoining property. The nearest property line, she says, is 600 feet away. Winters Run Road is about a 1/4 mile from the compound.

No one has objected to Ms. Birkholz about her keeping the animals. While the Staff Report recommends a maximum of 13 dogs she, in fact, has 16 and asks for permission for no more than 16 dogs.

She acknowledged that the dogs are not licensed and indicated she would obtain licenses for them. The dogs have proper shots.

She acknowledges the conditions recommended by the Harford County Department of Planning and Zoning staff. She understands she may bring no new dogs onto the property, and she understands that this special exception will eventually terminate once the number of dogs reach 5 or fewer.

The Applicant offered 5 letters from neighbors which indicated the neighbors' lack of opposition to the request.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated, in partially correcting Ms. Birkholz's testimony, that the nearest property line is about 550 feet away from Ms. Birkholz's residence, and is about 1,300 feet from Winters Run Road. However, no dwelling is in close proximity to the subject property, and all surrounding parcels are of large lots. As previously noted, the property adjoins I-95 to the south.

Mr. McClune envisions no adverse impact. The property is relatively isolated. No customers will come onto the property, there will be no boarding or breeding the dogs for other people.

Mr. McClune will agree to a modification of the Staff Report recommendations to allow no more than a maximum of 16 dogs on the property. They must be licensed. The special exception use will eventually terminate as the dogs die, as the Applicant cannot replace the animals.

There was no testimony or evidence given in opposition.

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APPLICABLE LAW:

The Applicants request a special exception pursuant to Section 267-53H(3) as follows:

“(3) Kennels. These uses may be granted in the AG, VR, B1 and B2 Districts, provided that all buildings for shelters of animals and all runways shall be located at least two hundred feet from any lot line.”

“Kennel” is defined as:

“An establishment, not part of an agricultural use, in which six or more domestic animals such as cats, dogs and other pets more than six months old are kept, groomed, bred, boarded or trained in return for remuneration or sale.”

Section 267-9I, Limitations, Guides and Standards, of the Harford County Development Regulations is also application to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

While, admittedly, the Applicant proposes to maintain a large number of dogs on her property, 11 more than is allowed as a matter of right, due to the size of the Applicant’s parcel and the location of the dog compound no detrimental impact to any adjoining property should result. The animals will be maintained in an area which is far removed from all property lines and, in fact, is almost a 1/4 mile from Winters Run Road, the nearest public road. The property itself is wooded, having been used for agricultural purposes for many years.

While it cannot be said with any absolute certainty that occasional barking will not be heard by neighbors in this relatively rural area, that noise should not be appreciably different than one would normally experience in a mixed agricultural/rural area of large lots.

Furthermore, the Department has recommended conditions which, if imposed and observed by the Applicant, should operate to lessen the impact of the special exception. The Applicant has agreed to these conditions.

The specific requirements of the kennel special exception, found at Section 267-53H(3) of the Harford County Development Regulations impose relatively few requirements:

(3) Kennels. These uses may be granted in the AG, VR, B1 and B2 Districts, provided that all buildings for shelters of animals and all runways shall be located at least two hundred feet from any lot line.

The property is zoned AG, and the buildings sheltering the animals and its compound are located, according to Mr. McClune, 550 feet from the adjoining property line, almost three times the statutory requirement.

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Accordingly, it can be seen that the Applicant meets the specific requirements of the kennel special exception.

Nevertheless, this, of course, does not end the discussion. The Applicant's request must then be viewed in light of the factors contained in Section 267-9I, Limitations, Guides and Standards, of the Harford County Development Regulations. Those factors are addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

The special exception should not be impacted by the number of persons living in the area, nor should it impact them in turn. The use is located on a large lot in an agricultural/residential district of Harford County comprising, for the most part, large lots. There are no major subdivisions in the area. The kennel will not be of a commercial nature, but will be personal to the Applicant. Accordingly, there should be no adverse impact on the number of persons living or working in the immediate area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The Applicant's property is on Winters Run Road, a rural County road. Its use for the special exception should generate very little if any additional traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The use, as a special exception, has been determined by Harford County legislation to be compatible with other principal permitted uses as long as all specific and general standards are met. Accordingly, it does not adversely impact the orderly growth of the neighborhood or fiscal impact.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The only potential readily discernable impact from the use would be noise from the animals. Given the distance of the animal compound from any adjoining properties and Winters Run Road, that noise should be only slightly perceptible to adjoining neighbors, if at all. This is not to say, of course, there will never be any perceptible noise. However, that noise should be of no greater magnitude than what one would normally expect from agricultural uses in this area. Nevertheless, a condition will be appended to this approval that requires the Applicant to make all efforts to minimize, if not eliminate, noise which will be created by the animals, and that barking not be allowed to become a nuisance in the neighborhood.

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- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Joppa/Magnolia Volunteer Fire Departments will provide fire protection and emergency service. The property is served by private well and septic systems. A company of the Applicant's choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

With appropriate conditions, the use is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Harford County Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such features or opportunities for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, it can be seen that the use, when reviewed in light of the Limitations, Guides and Standards, is found to be fully compatible with surrounding uses and required considerations.

Finally, the use, being a special exception, must be reviewed in light of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), which holds that a special exception use is to be allowed when all special conditions are met, and it is found to have no impacts greater than those inherently associated with such a use.

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Every kennel will have some impact on its surrounding properties, including the generation of noise. The impact to be expected is a relatively constant one. Wherever there are animals, and those animals are allowed to spend at least some parts of their day outside, there will no doubt be barking and noise. However, if the proposed use has impacts which are not greater than those normally expected, then the special exception cannot be denied based on that impact alone.

It is accordingly found that the proposed use will not generate impacts greater than those normally expected from a kennel operation. Indeed, given the relatively limited number of animals, its remote location in relationship to adjoining properties, and the conditions agreed to by the Applicant, the impact should not be as great as many kennels. The use, therefore, fully meets the standards as set forth in Schultz v. Pritts.

CONCLUSION:

It is accordingly recommended that requested special exception for a kennel be approved, subject to the following:

1. The number of adult dogs shall be limited to the 16 dogs now on the property. No additional dogs shall be brought onto the site.
2. There shall be no boarding or grooming of dogs on site, other than those owned by the Applicant.
3. This approval is for the Applicant's use only and shall terminate upon the sale of the property or at such time as the number of dogs on the property is decreased to 5 or fewer.
4. All dogs should be licensed within 3 months of this decision.
5. Noise shall not be allowed to become a nuisance to the neighborhood. The Applicant shall take all steps to insure that the noise impact of the dogs on the neighborhood is minimized.

Date: June 5, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 3, 2007